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AUG 13 2019	
CLERK US DISTRICT COURT DISTRICT OF ARIZONA	
BY	DEPUTY

12 IN THE UNITED STATES DISTRICT COURT  
13 FOR THE DISTRICT OF ARIZONA

14 United States of America,  
15  
16 Plaintiff,

CR 19-2117-TUC-JGZ-MSD  
Mag. No. 19-07488M (MSD)

17 vs.

PLEA AGREEMENT

18 Anthony Oliver Pierre,  
19  
20 Defendant.

(Fast Track U.S.S.G. § 5K3.1)

21 The United States of America and the defendant agree to the following disposition  
22 of this matter:

23 PLEA

24 The defendant agrees to plead guilty to the Information charging the defendant with  
25 a violation of 8 U.S.C. §§ 1324(a)(1)(A)(ii) and 1324(a)(1)(B)(i), Transportation of Illegal  
26 Aliens for Profit, a felony.

27 ELEMENTS OF THE OFFENSE AND SENTENCING FACTOR

- 28 1. The defendant knew or was in reckless disregard of the fact that a certain alien  
had come to, entered, or remained in the United States in violation of law.
2. The defendant knowingly transported or moved such alien within the United  
States by means of transportation or otherwise in order to help such alien remain in the  
United States illegally.
3. The defendant committed the offense for the purpose of commercial advantage  
or private financial gain.

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3. The defendant may withdraw from the plea agreement if he/she receives a sentence that exceeds the stipulated ranges listed above.

4. If the defendant moves for any adjustments in Chapters Two, Three or Four of the Sentencing Guidelines or any “departures” from the Sentencing Guidelines, the government may withdraw from this agreement. If the defendant argues for a variance under 18 U.S.C. § 3553(a) in support of a sentence request below the stipulated range in this agreement, the government may oppose the requested variance. The government, however, will not withdraw from the agreement if the defendant argues for, and the Court grants, a variance below the stipulated range in this agreement.

5. The parties agree that the defendant was an average participant in the offense for the purpose of role analysis under U.S.S.G. §§ 3B1.1 and 3B1.2.

6. If the Court, after reviewing this plea agreement, concludes any provision is inappropriate under Fed. R. Crim. P. 11(c)(5), it may reject the plea agreement, giving the defendant, in accordance with Fed. R. Crim. P. 11(d)(2)(A), an opportunity to withdraw the defendant's guilty plea.

7. The defendant recognizes that pleading guilty may have consequences with respect to his/her immigration status if defendant is not a citizen of the United States. Under federal law, a broad range of crimes are removable offenses, including the offense(s) to which defendant is pleading guilty. Removal and other immigration consequences may be the subject of a separate judicial or administrative proceeding, and the defendant has discussed the direct and collateral implications this plea agreement may have with his or her defense attorney. Defendant nevertheless affirms that he/she wants to plead guilty regardless of any immigration consequences that this plea may entail, even if the consequence is defendant's automatic removal from the United States.

## Forfeiture

Nothing in this plea agreement shall be construed to protect the defendant from civil forfeiture proceedings or prohibit the United States from proceeding with and/or initiating an action for civil forfeiture. Further, this agreement does not preclude the United States

1 from instituting any civil proceedings as may be appropriate now or in the future.

2 Plea Addendum

3 This written plea agreement, and any written addenda filed as attachments to this  
4 plea agreement, contained all the terms and conditions of the plea. Any additional  
5 agreements, if any such agreements exist, shall be recorded in a separate document and  
6 may be filed with the Court under seal. Accordingly, additional agreements, if any, may  
7 not be in the public record.

8 Waiver of Defenses and Appeal Rights

9 Provided the defendant receives a sentence not to exceed 41 months' imprisonment,  
10 the defendant waives any and all motions, defenses, probable cause determinations, and  
11 objections that the defendant could assert to the information or indictment, or to the petition  
12 to revoke, or to the Court's entry of judgment against the defendant and imposition of  
13 sentence upon the defendant providing the sentence is consistent with this agreement. The  
14 sentence is in accordance with this agreement if the sentence imposed is within the  
15 stipulated range or below the stipulated range if the Court grants a variance. The defendant  
16 further waives: (1) any right to appeal the Court's entry of judgment against defendant; (2)  
17 any right to appeal the imposition of sentence upon defendant under 18 U.S.C. § 3742  
18 (sentence appeals); (3) any right to appeal the district court's refusal to grant a requested  
19 variance; (4) any right to collaterally attack defendant's conviction and sentence under 28  
20 U.S.C. § 2255, or any other collateral attack; and (5) any right to file a motion for  
21 modification of sentence, including under 18 U.S.C. § 3582(c). The defendant  
22 acknowledges that this waiver shall result in the dismissal of any appeal or collateral attack  
23 the defendant might file challenging his/her conviction or sentence in this case. If the  
24 defendant files a notice of appeal or a habeas petition, notwithstanding this agreement,  
25 defendant agrees that this case shall, upon motion of the government, be remanded to the  
26 district court to determine whether defendant is in breach of this agreement and, if so, to  
27 permit the government to withdraw from the plea agreement. This waiver shall not be  
28 construed to bar an otherwise-preserved claim of ineffective assistance of counsel or of

1 “prosecutorial misconduct” (as that term is defined by Section II.B of Ariz. Ethics Op. 15-  
2 01 (2015)).

### 3 Reinstitution of Prosecution

4 Nothing in this agreement shall be construed to protect the defendant in any way  
5 from prosecution for perjury, false declaration or false statement, or any other offense  
6 committed by the defendant after the date of this agreement. In addition, if the defendant  
7 commits any criminal offense between the date of this agreement and the date of  
8 sentencing, the government will have the right to withdraw from this agreement. Any  
9 information, statements, documents and evidence which the defendant provides to the  
10 United States pursuant to this agreement may be used against the defendant in all such  
11 proceedings.

12 If the defendant's guilty plea is rejected, withdrawn, vacated, or reversed by any  
13 court in a later proceeding, the government will be free to prosecute the defendant for all  
14 charges as to which it has knowledge, and any charges that have been dismissed because  
15 of this plea agreement will be automatically reinstated. In such event, the defendant waives  
16 any objections, motions, or defenses based upon the Speedy Trial Act or the Sixth  
17 Amendment to the Constitution as to the delay occasioned by the later proceedings.  
18 Defendant agrees that the stipulated sentencing ranges set forth under "Agreements  
19 Regarding Sentence" will not be offered if prosecution is re-instituted.

### 20 Disclosure of Information to U.S. Probation Office

21 The defendant understands the government's obligation to provide all information  
22 in its file regarding defendant to the United States Probation Office. The defendant fully  
23 understands and agrees to cooperate fully with the United States Probation Office in  
24 providing all information requested by the probation officer.

### 25 Effect on Other Proceedings

26 I further understand that if I violate any of the conditions of my supervised release,  
27 my supervised release may be revoked. Upon such revocation, notwithstanding any other  
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1 provision of this agreement, I may be required to serve a term of imprisonment or my  
2 sentence may otherwise be altered.

3 WAIVER OF DEFENDANT'S RIGHTS

4 I have read each of the provisions of the entire plea agreement with the assistance  
5 of counsel and understand its provisions. I have discussed the case and my constitutional  
6 and other rights with my attorney. I understand that by entering my plea of guilty I will be  
7 giving up my right to plead not guilty; to trial by jury; to confront, cross-examine, and  
8 compel the attendance of witnesses; to present evidence in my defense; to remain silent  
9 and refuse to be a witnesses against myself by asserting my privilege against self-  
10 incrimination; all with the assistance of counsel, to be presumed innocent until proven  
11 guilty beyond a reasonable doubt, and to appeal. This waiver shall not be construed to bar  
12 an otherwise-preserved claim of ineffective assistance of counsel or of "prosecutorial  
13 misconduct."

14 I agree to enter my guilty plea as indicated above on the terms and conditions set  
15 forth in this agreement.

16 I have been advised by my attorney of the nature of the charge to which I am entering  
17 my guilty plea. I have further been advised by my attorney of the nature and range of the  
18 possible sentence.

19 My guilty plea is not the result of force, threats, assurance or promises other than  
20 the promises contained in this agreement. I agree to the provisions of this agreement as a  
21 voluntary act on my part, rather than at the direction of or because of the recommendation  
22 of any other person, and I agree to be bound according to its provisions.

23 I agree that this written plea agreement contains all the terms and conditions of my plea  
24 and that promises made by anyone (including my attorney) that are not contained within  
25 this written plea agreement are without force and effect and are null and void.

26 I am satisfied that my defense attorney has represented me in a competent manner.

27 I am not now on or under the influence of any drug, medication, liquor, or other  
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1 intoxicant or depressant, which would impair my ability to fully understand the terms and  
2 conditions of this plea agreement.

3 FACTUAL BASIS AND SENTENCING FACTOR

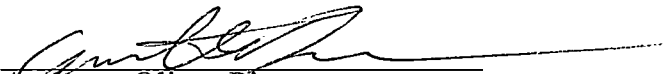
4 I agree that the following facts accurately describe my conduct in connection with  
5 the offense to which I am pleading guilty and that if this matter were to proceed to trial the  
6 government could prove these facts beyond a reasonable doubt:

7  
8 Factual Basis

9 On or about July 21, 2019, at or near Benson, in the District of Arizona, I,  
10 Anthony Oliver Pierre, was driving a white Nissan Maxima. A Border Patrol  
11 agent approached me in a Safeway parking lot. After speaking with him, I  
12 ran toward my vehicle and took off at a high rate of speed. I was pursued by  
13 the Border Patrol agent but I failed to yield. I got out of the car and tried to  
14 open the trunk on two occasions. I ran over a curb and eventually got a flat  
15 tire. I had two people in the trunk of my vehicle, Eduardo Vallejo-Cruz and  
16 a juvenile. I knew that both the people I was transporting were illegally  
17 present in the United States. I intentionally and recklessly created a  
18 substantial risk of death or serious bodily injury to the people in the trunk by:  
19 driving with them in the trunk; driving in excess of the speed limit and  
20 recklessly; fleeing from Border Patrol; and driving under the influence of  
21 drugs. I intended to violate U.S. immigration law by assisting them in  
22 remaining in the United States illegally. I was to be paid for transporting  
23 them.

24 I have read this agreement or it has been read to me in Spanish, and I have carefully  
25 reviewed every part of it with my attorney. I understand it, and I voluntarily agree to it.

26  
27 Date: 8/13/19

28   
Anthony Oliver Pierre  
Defendant

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30 DEFENSE ATTORNEY'S APPROVAL

31 I have discussed this case and the plea agreement with my client in detail and have  
32 advised the defendant of all matters within the scope of Rule 11, Fed. R. Crim. P., the  
33 constitutional and other rights of an accused, the factual basis for and the nature of the  
34 offense to which the guilty plea will be entered, possible defenses, and the consequences  
35 of the guilty plea, including the defendant's waiver of the right to appeal. No assurances,  
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1 promises, or representations have been given to me or to the defendant by the government  
2 or by any of its representatives which are not contained in this written agreement. I concur  
3 in the entry of the plea as indicated above and on the terms and conditions set forth in this  
4 agreement as in the best interests of my client. I agree to make a bona fide effort to ensure  
5 the guilty plea is entered in accordance with all the requirements of Rule 11, Fed. R. Crim.  
6 P.

7 I translated or caused to be translated this agreement from English into Spanish to  
8 the defendant on the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_.

9  
10 Date: 8/13/19

  
\_\_\_\_\_  
Louis M. Spivack Esq.  
Attorney for Defendant

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15 GOVERNMENT'S APPROVAL

16 I have reviewed this matter and the plea agreement. I agree on behalf of the United  
17 States that the terms and conditions set forth are appropriate and are in the best interests of  
18 justice.

19 MICHAEL BAILEY  
20 United States Attorney  
District of Arizona

21  
22 Date: 8/13/19

  
\_\_\_\_\_  
ANN L. DEMARAIS  
Assistant U.S. Attorney